

875—8.5(88) Relationship to enforcement.

8.5(1) Confidentiality. The identity of an employer requesting on-site consultation as well as the file of the consultant's visit shall not be forwarded or provided to the bureau of occupational safety and health, unless the employer fails to take the necessary action to protect employees from a hazard considered by the consultant to be an imminent danger or serious hazard.

8.5(2) Effect upon scheduling.

a. An on-site consultative visit already in progress shall have priority over compliance inspections by the bureau of occupational safety and health except as provided in 8.5(2) "b." The consultant and the employer shall notify the compliance officer of the visit in progress and request delay of the inspection until after the visit is completed. An on-site consultative visit shall be considered in progress in relation to the working conditions, hazards, or situations covered by the request from the beginning of the opening conference through the end of the closing conference; except that for periods which exceed 30 days from the initiation of the opening conference, the commissioner may determine that the inspection will proceed. For working conditions, hazards, or situations not covered by the request, the on-site consultative visit shall be considered in progress only while the consultant is at the place of employment.

b. The consultant shall terminate an on-site consultative visit already in progress if one of the following kinds of compliance inspection by the bureau of occupational safety and health is about to take place:

1. Imminent danger investigations.
2. Fatality/catastrophe investigations.
3. Complaint investigations.
4. Other critical inspections as determined by the commissioner.

c. An on-site consultative visit shall not take place while an enforcement inspection is in progress at the establishment. An enforcement inspection shall be deemed "in progress" from the time a compliance officer initially seeks entry to the workplace to the end of the closing conference. An enforcement inspection will also be considered "in progress" in cases where entry is refused, until such times as the inspection is conducted, the commissioner determines that a warrant to enter will not be sought, or the commissioner determines that allowing a consultative visit to proceed is in the best interest of employee safety and health. An on-site consultative visit shall not take place subsequent to an enforcement inspection until the employer has been notified that no citations will be issued, or if a citation is issued, on-site consultation shall only take place with regard to those citation items which have become final orders.

d. When an employer requests and undergoes a consultative visit at an establishment covering all conditions and operations in the place of employment related to occupational safety and health; corrects all hazards that have been identified during the course of the consultative visit within established time frames, and posts notice of their correction when complete; demonstrates to the consultant that certain core elements of an effective safety and health program are in effect, and that the remaining elements of an effective safety and health program shall be implemented within a reasonable, established time frame; and agrees to request a consultative visit if major changes in working conditions or work processes occur which may introduce new hazards, the employer may, upon request, be exempt from a general schedule enforcement inspection for a period of one year from the end of the closing conference of the consultative visit. Between the time of election to participate in the process required to qualify for the exemption and completion of the process, the employer must post a notice of the participation. When an employer requests consideration for an inspection exemption under this rule, the same procedures for correction of other-than-serious hazards shall apply as this chapter requires for serious hazards.

8.5(3) Effect upon enforcement.

a. The advice of the consultant and the consultant's written report shall not be binding upon a compliance officer in a subsequent enforcement inspection. In a subsequent inspection, a compliance officer is not precluded from finding hazardous conditions or violations of standards or rules for which citations would be issued and penalties proposed.

b. The hazard identification and correction assistance given by the consultant, or the failure of the consultant to point out a specific hazard, or other possible errors or omissions by the consultant

shall not be binding upon a compliance officer, and shall not affect the regular conduct of a compliance inspection, or preclude the finding of alleged violations and the issuance of citations, or act as a defense to any enforcement action.

c. In the event of a subsequent enforcement inspection, the employer is not required to inform the compliance officer of the prior consultative visit. The employer is not required to provide a copy of the consultant's written report to the compliance officer, except to the extent that disclosure of information contained in the report is required by 875—10.20(88), specifically 29 CFR 1910.20. However, if the employer chooses to provide a copy of the consultant's report to the compliance officer, it may be used to determine the extent to which an inspection is required and as a factor in determining employer's good faith for the purpose of proposing penalties.